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*Attorneys for Defendant Comenity Bank*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

DANIEL J. COLVIN,

Cause No. \_\_\_\_\_

Plaintiff,

v.

**NOTICE OF REMOVAL**

COMENITY BANK,

Defendant.

TO: The Honorable Judges of the United States District Court, for the District of Montana, Billings Division:

**NOTICE OF REMOVAL**

Defendant Comenity Bank (“Comenity”), appearing specially so as to preserve any and all defenses available under Rule 12 of the Federal Rules of Civil Procedure and specifically preserving the right to demand arbitration pursuant to contractual agreements and the Federal Arbitration Act, 9 U.S.C. §§1, et seq.,

hereby gives notice of the removal of this action, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, to the United States District Court for the District of Montana, Billings Division. In support of this notice of removal, Comenity states as follows:

1. Removing party Comenity is the Defendant in the above-entitled action filed in Montana's Sixth Judicial District Court, Park County.
2. On May 6, 2020, the above-entitled action commenced against Comenity in Montana's Sixth Judicial District Court, Park County, as Cause No. DV 20-65.
3. Comenity first received the Summons and Complaint when it was served on May 29, 2020. This Notice of Removal is made within 30 days after the case became removable.
4. Comenity asserts Plaintiff's Complaint fails to state a claim for which relief may be granted. It will move to dismiss the Complaint on these grounds.
5. Other than the Affidavit of Service, no other pleadings or orders have been filed as of the date Defendant filed this Notice of Removal.
6. The United States District Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1441, under which the district courts have original jurisdiction of all civil actions arising under the laws of the United States. Plaintiff's Complaint alleges violations of the Fair Debt Collection

Practices Act, 15 U.S.C. § 1692, et seq., and the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. If other claims are alleged, the United States District Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1337.

7. Copies of all pleadings filed in the Montana Sixth Judicial District Court are attached hereto as "Exhibit A".

8. Written notice of this filing has been given to Plaintiff and the Montana Sixth Judicial District Court as provided by law and L.R. 3.3(a).

9. Nothing in this Notice of Removal shall be interpreted as substantially invoking the litigation process sufficient to waive Comenity's right to compel arbitration or as a waiver or relinquishment of Comenity's right to assert any defense or affirmative matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) insufficiency of process; (3) insufficiency of service of process; (4) improper joinder of claims and/or parties; (5) failure to state a claim; (6) the mandatory arbitrability of some or all of the claims; (7) failure to join indispensable parties; or (8) any other pertinent defense available under Montana law, Rules 8 and 12, F.R.Civ.P., or any other state or federal statute.

10. To the extent remand is sought by Plaintiff or visited by the Court, Comenity requests the opportunity to brief the issues and submit additional arguments and evidence to be heard at oral argument.

**PRAYER FOR RELIEF**

Wherefore, Defendant Comenity Bank requests that the above-entitled action be removed from Montana's Sixth Judicial District Court, Park County, to the United States District Court, Billings Division.

DATED this 18<sup>th</sup> day of June, 2020.

/s/ Jill Gerdum  
Jill Gerdum  
Axilon Law Group, PLLC  
*Attorneys for Defendant Comenity Bank*

## CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2020, a copy of the **NOTICE OF REMOVAL** was served upon the following parties by the following method(s):

CM/ECF  
 Hand Delivery  
1 U.S. Mail, First Class  
 Overnight Delivery Service  
 Fax  
 E-Mail

1. Daniel J. Colvin  
81 Old Clyde Park Road  
Livingston, MT 59047

/s/ Jill Gerdrum